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IN THE

Supreme Court of The United States

OCTOBER TERM, 1945

No. 599

CLAUD COCHRAN,
Petitioner,

vs.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

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Claud Cochran prays that a writ of certiorari be issued to review the judgment of the Circuit Court of Appeals for the Fifth Circuit, entered in the above entitled cause October 11, 1945, affirming the orders and judgments of the District Court of the United States for the Northern District of Georgia which overruled petitioner's motion for a directed verdict.

ORDERS AND JUDGMENTS BELOW

The order and judgment of the court overruling petitioner's motion for a directed verdict appears in the record at p. 35. The opinion of the Circuit Court of Appeals appears in the record at p. 47.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered October 11, 1945 (R. 48). The jurisdiction of this court is invoked under Sec. 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

(1) Was the evidence sufficient to authorize the conviction of petitioner.

(2) Did the court err in affirming the judgment of the District Court.

STATUTES INVOLVED

The statutes involved are:

Sections 2810, 2831 and 2803 of Title 26, U. S. C.

STATEMENT

Petitioner was indicted at the October Term 1944 by a United States Grand Jury in and for the Atlanta Division of the Northern District of Georgia (R. 1). The indictment contained four counts. The first count charged petitioner with having in his possession an unregistered distillery; the second count charged him with making and fermenting two thousand gallons of mash; the third count charged him with working at an unregistered distillery and the fourth count charged him with the possession of ninety gallons of non-tax paid liquor. Petitioner went to trial on the 18th day of June 1945 and the jury returned a verdict of guilty on counts 1, 3 and 4 and not guilty on count 2 (R. 4). On the 9th day of July, 1945, the court committed petitioner to the custody of

the Attorney General for a period of one year and one day and to pay a fine of $200.00 to stand committed (R. 38).

The pertinent facts, as disclosed by the evidence, are substantially as follows:

Petitioner testified that he was working at the distillery but that he did not possess it and did not possess the non-tax paid liquor discovered there by the officers. He contends that the only evidence of his possession of the distillery and of the possession of the liquor is purely circumstantial and that his positive testimony to the effect that he was only working for a man who had been there and who was in charge of the distillery was sufficient to overcome the circumstantial evidence. He testified that he did not own the distillery or the non-tax paid liquor and that he did not have dominion and control over same.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the District Court of the United States did not err in refusing to direct a verdict for petitioner on the ground that the evidence was insufficient to warrant their conviction.

2. In not reversing the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The question involved is whether the evidence was sufficient to warrant the conviction of petitioner.

"Possession" within Act 1934, Sec. 201 means the exer-

cise of such a power over a thing as attaches to lawful ownership, or such dominion and control as will give the possessor the power of disposal.

U. S. v. Hodorowicz, 105 F. (2d) 218;
U. S. v. Dowait, 105 F. (2d) 218

A well known principle of law as stated by the 8th Circuit Court of Appeals is:

> "Unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial judge to instruct the jury to return a verdict for the accused, and, where all the evidence is as consistent with innocence as with guilt, it is the duty of this court to reverse a judgment against the accused."
>
> *Salinger v. United States,*
>
> 23 F. (2d), 48, 52 and citations.

For the foregoing reasons it is respectfully submitted that the petition for writ of certiorari should be granted.

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